

including Smith, Jean Hillis and Gray. The visits confirmed that KOKS' operation had an adverse effect on their television and FM radio reception. KOKS Ex. 6, pp. 5-8, 13. The FOB inspectors also found that television reception improved at the homes of Mr. and Mrs. Jim Farley, and Mike and Annie Pennington when KOKS was off the air. KOKS Ex. 6, pp. 9, 11, 16. Previously, Calvary had reported that it had cured blanketing interference to Channel 8 for Farley and that it could not find a convenient time to address the problems of the Penningtons. MMB Ex. 21, pp. 11, 16.

41. By letter dated April 27, 1990, the Chief, Audio Services Division, requested Calvary and petitioners Smith and Jean Hillis to plot on enclosed maps the locations of persons who complained of interference during the initial year of KOKS' broadcast operations. The purpose of the maps was to determine which of the complainants resided within KOKS' blanketing contour. The parties were directed to return the maps within 45 days of the date of the letter. MMB Ex. 24.

42. On October 30, 1990, the Chief, Audio Services Division, determined that Calvary may not have satisfied the complaints of as many as 220 persons found to be residing within the KOKS blanketing contour. Accordingly, the Chief ordered that Calvary restore service at no cost to those complainants within 120 days.⁶ Further, with respect to complainants found to be

⁶ The Chief informed Calvary that it need not take further action with respect to 13 complainants whose problems, according to Calvary, had been resolved. Among those complainants were

residing outside the blanketing contour, the Chief ordered that Calvary provide technical information and assistance on how to resolve their problems. Finally, with respect to complainants who filed beyond the initial one year period, Calvary was to provide technical assistance. Calvary was ordered to submit progress reports every 30 days. MMB Ex. 25, passim.

43. To determine which complainants desired further assistance, Calvary prepared a questionnaire and sent one to all persons whose service was to be restored. The questionnaire asked whether the complainant was receiving blanketing interference on Channels 8, 12, 15 and 39; whether the complainant was receiving blanketing interference to satellite reception; whether the complainant had a booster; and whether the complainant was receiving interference from the highway patrol. Finally, the questionnaire informed complainants that Calvary was not responsible for interference caused to Channel 6. The questionnaire did not ask for the number of television sets owned by the complainant or whether any radios were affected by KOKS interference. Also, the questionnaire did not inquire, with respect to those persons who had a booster, whether any television sets were not connected to the booster. Calvary sent out its questionnaires in the first week of December 1990. MMB Ex. 27, p. 1; MMB Ex. 31; Tr. 484-88.

44. Calvary did not send a questionnaire to those persons

Sandra Durbin, the Freemans, Mrs. William T. (Joanne) Gray, Leatha Piper and Mary Wynn. MMB Ex. 25, p. 3, n. 5.

whose problems it had reportedly cured. Moreover, Calvary did not look at the files it maintained to determine whether any of those persons had complained subsequent to the visit during which their problems had supposedly been resolved. Tr. 496.

45. Upon return of the questionnaires, Calvary determined that approximately 110 persons desired home visits. After consulting with Lampe about what should be done, Calvary ordered from the Microwave Filter Company 160 filters which were specifically designed to trap out KOKS' frequency. The cost per filter was about \$17.10. KOKS Ex. 1, pp. 8-9; KOKS Ex. 3, pp. 14-15; MMB Ex. 32, pp. 1, 3-4; Tr. 488, 490-93. For those persons who did not want Calvary to come to their home to restore service, Calvary initially sent a letter in which it recommended that the complainant purchase a \$4.00 Radio Shack filter. MMB Ex. 26, pp. 60-73. Later, Calvary advised complainants who did not want a home visit that they could purchase a Radio Shack filter or they could purchase the Microwave Filter Company filter from Lampe's TV repair business. MMB Ex. 27, pp. 59, 61-69, 73, 76-77, 79-84, 88-90.

46. Between February 4, 1991, and February 22, 1991, Calvary went to the residences of 106 complainants. For all but one of the complainants,⁷ Calvary generally installed one

⁷ With respect to Dairel Denton, Calvary did not install anything because he was unable to meet Calvary personnel at the time originally scheduled. Calvary subsequently sent Denton a letter advising him that he could purchase filters either from Radio Shack or Lampe's business. MMB Ex. 4, pp. 3-4; MMB Ex. 27, pp. 80-82; Tr. 1045-48.

Microwave Filter Company filter on one television set. In this regard, Don Stewart instructed Lampe to try to use only one filter per television set and to repair only one television set per residence. Don Stewart also instructed Lampe not to install a filter on portable television sets which Stewart defined as anything with a handle. In some instances, however, Calvary did install more than one Microwave filter, and, occasionally, also installed a Radio Shack filter. Moreover, for a few complainants, Calvary changed the wiring which connected a complainant's antenna and television set. The work Calvary performed was done at no cost to the complainants. MMB Ex. 26, passim; MMB Ex. 27, passim; KOKS Ex. 1, p. 9; KOKS Ex. 2, p. 9; Tr. 260, 742.

47. Several complainants requested Calvary to restore service to more than one television. In addition, some complainants asked Calvary about eliminating KOKS interference to radios. However, Calvary personnel told Smith, Jean Hillis and Michael Beckham, operator of the Whispering Oaks Boarding Home, that Calvary was obligated to fix only one television set per residence. Further, Don Stewart told Beckham that if Beckham wanted a filter for the second television set at the boarding home, he would have to pay \$50.00 for the filter alone. Calvary also refused to attempt restoration of service to the radios of both Smith and Jean Hillis. The Hillises were told that if they wanted filters, they could buy them. MMB Ex. 2, pp. 4, 27; MMB Ex. 3, pp. 4; MMB Ex. 9, pp. 4, 6-7; Tr. 957-59. Consistent with

its questionnaire and its responses to Smith, Jean Hillis and Beckham, Calvary did not inquire of other complainants whom it visited whether they had more than one television set or a radio in need of repair, nor did Calvary check its files to review prior complaints before going to the complainant's residence. Tr. 516-17, 532-33, 571.

48. Calvary submitted reports to the Commission of its visits to the residences of complainants on February 12, 1991, and February 25, 1991, respectively. Calvary stated that the Microwave filter it had used, the FAS-Trap 5K FM-89.5, eliminated FM blanketing interference caused by KOKS. Calvary also claimed that it went beyond the Commission's requirements by eliminating FM blanketing interference to Channel 6. Finally, Calvary stated that the average cost per home visit was \$65.00. However, Calvary's reports were silent as to the number of television sets per residence it had serviced and as to whether any filters had been installed on complainants' radios. MMB Ex. 26, passim; MMB Ex. 27, passim.

49. After reviewing the reports submitted to the Commission by Calvary, and furnished by the Commission to the petitioners, Smith, Jean Hillis, Beckham, and Fred and Marie Ellis, among others, specifically disputed Calvary's claims that their service had been restored. MMB Ex. 2, pp. 27-28; MMB Ex. 3, pp. 4-5; MMB Ex. 9, pp. 6-7; MMB Ex. 30, pp. 5-6. In addition, Sandra Durbin, Clara Freeman, Joanne Gray, Mary Wynn and Leatha Piper pointed out that their complaints had not even been

addressed by Calvary during the licensee's 1991 visits to restore service. MMB Ex. 5, pp. 14-15; MMB Ex. 6, pp. 8-9; MMB Ex. 7, pp. 14-15; MMB Ex. 10, pp. 18-19; MMB Ex. 29, pp. 9-10. Finally, Marie Christian complained that, although she had three television sets, Calvary installed a filter on only one set. MMB Ex. 26, p. 4. Except with respect to Wynn, there is no evidence that Calvary ever responded to the complaints noted above or that it attempted any further repairs. Tr. 536-37.

50. Calvary never turned the KOKS transmitter off while its personnel were at a complainant's home. In addition, Calvary's personnel almost never discussed with complainants what their reception looked like before KOKS came on the air or how their reception with Calvary's filters compared with their reception prior to the advent of KOKS. Thus, Calvary's reported cures were based almost entirely on its own assessment of its repair efforts. Tr. 427-28, 462, 507, 517, 574, 588-89.

51. After reviewing Calvary's reports and the responses of various complainants, the Mass Media Bureau requested that Kansas City FOB investigate the continued complaints of KOKS blanketing interference. From February 10 through 13, 1992, Kansas City FOB engineers Ronald Ramage and Mike Gusick visited the residences of 14 complainants, including Doris Smith, Jean Hillis, Joanne Gray, Clara Freeman, Sandra Durbin, Leatha Piper, Mary Wynn, and Fred and Marie Ellis. While at each residence, Ramage had Calvary turn off the KOKS transmitter so that he and Gusick could observe what differences, if any, there were to television reception.

MMB Ex. 1, pp. 9, 11, 28; Tr. 890-91. One week later, Ramage completed a report of the visits. MMB Ex. 1, p. 5.

52. Ramage concluded that Calvary had not restored television or radio reception to the level enjoyed by the complainants prior to the commencement of operations by KOKS. Ramage based his conclusion on the following factors: the licensee placed one filter on only one television set per residence; the licensee did not address problems with portable television receivers and radio receivers; the licensee did not compensate for the fact that the steps taken to eliminate KOKS interference reduced the level of desired signals reaching the television receiver; there were observed differences in the quality of television pictures received by some of the complainants' with KOKS on and off the air; the licensee failed to reimburse complainants who undertook to restore their television reception at their own expense; and that complainants asserted that their picture quality was better before KOKS began broadcasting in 1988 than it was in 1992 with KOKS off the air. MMB Ex. 1, pp. 9-10, 13, 29, 31, 33, 35, 37, 39, 43, 45, 47, 49, 51, 53, 55; Tr. 861-62, 871-73, 884-88. Ramage also found that the licensee did not take the steps viewed by its own engineer as necessary to restore television reception. MMB Ex. 1, p. 11.

53. In the HDO, the Commission explicitly instructed Calvary that its obligation to restore Channel 6 was no different from its obligation to restore service to other channels viewed by complainants before KOKS began operations. However, Calvary

has taken no additional steps to restore reception of Channel 6, nor has it informed those within the blanketing contour of its obligation to do so. Tr. 585-86, 760.

Ineptness Issue

54. In specifying an ineptness issue against Calvary, the Commission cited four observations from the Ramage report of the inspection of Station KOKS which warranted consideration in this proceeding. These matters concerned the station's operating power, the station's antenna, the lighting of the station's tower, and the station's public file. HDO, 7 FCC Rcd at 4040-41. The Bureau reached a stipulation with Calvary, which was filed on September 18, 1992, that Calvary's change from a 4-bay to a 7-bay antenna did not violate Section 73.1690(b) of the Commission's Rules. In addition, the Bureau and Calvary reached a stipulation, which was entered into the record on November 17, 1992, that the placement of Calvary's tower lights did not constitute a violation of the Commission's rules. Tr. 144.

Transmitter Power

55. During the February 10, 1992, inspection of Station KOKS, Kansas City FOB engineers Ramage and Gusick observed transmitter readings for plate voltage and plate current which indicated that the station's transmitter was operating at 64% of authorized power. At the same time, however, the transmitter also showed a digital power reading of 95.1% of authorized power.

MMB Ex. 1, p. 6; Tr. 700. The station's logs showed a similar pattern in the readings dating back to at least January 1, 1991. MMB Ex. 1, pp. 18-26. Thus, it was unclear whether the station had been operating within the limitations prescribed by Section 73.1560(b) of the Commission's Rules.⁸

56. Ramage informed Don Stewart and station engineer Lampe that there was a significant unexplained discrepancy between the two means for measuring transmitter output power. Neither Stewart nor Lampe had been aware that there was such a discrepancy until Ramage brought it to their attention. Lampe thereupon called the transmitter manufacturer who informed him that either the plate current reading or the percentage of power indication was incorrect. Subsequently, Lampe ascertained that the plate current reading was faulty. On February 28, 1992, Lampe corrected the problem by replacing a diode. Thereafter, there have been no discrepancies between the two means for measuring transmitter output power. On March 25, 1992, Calvary informed the Commission that the noted repairs had been made. MMB Ex. 1, p. 7; MMB Ex. 28, passim; KOKS Ex. 1, p. 16; Tr. 706-08.

57. For various reasons, Calvary periodically operated its transmitter at less than 90% of its authorized power. During those periods when Calvary was so operating, it

⁸ In pertinent part, Section 73.1560(b) of the Commission's Rules states: "[T]he transmitter output power ... must be maintained as near as practicable to the authorized transmitter output power and may not be less than 90% nor more than 105% of the authorized power."

eventually notified the Commission. Specifically, by letter dated November 3, 1988, Calvary informed the Commission that, following an antenna fire, KOKS was operating at one-third of the station's authorized effective radiated power. Moreover, by letter dated December 27, 1988, Calvary stated that, from late October until the last week in November, it had been operating at roughly 50% of authorized power to assist in the resolution of complaints of blanketing interference. Because of the pending complaints as well as damage caused by gunshots to its coaxial cable, Calvary requested that it be allowed to operate marginally below 90% of authorized power pending repair of the cable and resolution of the blanketing complaints.⁹ Additionally, in the summer of 1989, Calvary obtained special temporary authority to operate KOKS at 55% of authorized power following an apparent lightning strike to its antenna. MMB Ex. 1, p. 16; KOKS Ex. 3, pp. 12-13; KOKS Ex. 8; KOKS Ex. 9.

58. The record evidence indicates that Calvary has operated outside the parameters prescribed in its license. Specifically, in the winter of 1989, before Lampe became the station's engineer, Don Stewart showed Craig Meador that the KOKS transmitter was operating in excess of 110% of authorized power. Stewart told Meador, who was on the Stewarts' property to repair their satellite system, that he was trying to reach Memphis with

⁹ However, Calvary did not explain the discrepancies between its November 3, 1988, letter and December 27, 1988, letter, with regard to the reasons given for operating at reduced power and the power actually used by the station.

KOKS. MMB Ex. 11, p. 2; Tr. 1020-21, 1025-27, 1034. Although Stewart testified that Meador was at the Stewarts' residence in the summer of 1988 before KOKS began broadcasting and not there in the winter of 1989, Stewart also acknowledged that Meador had been in the transmitter building with him. Tr. 1108, 1111, 1114. In any event, once Lampe became KOKS' engineer, there is no substantial evidence that the station's transmitter ever operated in excess of authorized power except during the month of January 1991. MMB Ex. 33, p. 4 (usage for January 1991 as reflected in February 1, 1992, bill; January 1991 usage is more than 100% higher than December 1990's usage and 50% higher than usage for any month between March 1991 and May 1992); Tr. 1091-98.

Public File

59. From the time Calvary obtained its construction permit for KOKS until the first Commission inspection of KOKS in May 1989, Calvary did not maintain a complete public file. Specifically, Calvary did not have in its public file a copy of "The Public and Broadcasting: Revised Edition," as required by Section 73.3527(a)(6) of the Commission's Rules, nor did it have quarterly lists of programs which dealt with community issues, as required by Section 73.3527(a)(8) of the Commission's Rules. KOKS Ex. 5, p. 5. However, once the matter was brought to its attention, Calvary took steps to have a complete public file. By the time of the second Commission inspection in December, 1989, Calvary apparently had all documentation required by the

Commission's public file rules. KOKS Ex. 3, pp. 30-31; KOKS Ex. 6, p. 22.

60. During the February, 1992, inspection of Station KOKS, Kansas City FOB engineer Ramage asked Nina Stewart to produce the KOKS public file for his review. Among other things, Ramage asked to see the station's lists of programs which dealt with significant community issues. In response, Nina Stewart produced a three-ring binder which contained the station's issues/programs lists. However, Ramage never opened the binder. Ultimately, Nina Stewart did show Ramage one issues/programs list. After reviewing the list, Ramage told her that the list needed the date it was placed in the public file. Beginning with the list for the first quarter of 1992, Calvary has noted the date when the list was placed in the station's public file. KOKS Ex. 3, p.30; KOKS Ex. 13, passim; Tr. 800-01, 1083-87.

61. Ramage also asked Nina Stewart to produce a list of donors which support specific programs. Nina Stewart responded that the station did not have such a list and explained that the station's donors supported all of KOKS' programs. Apparently, however, Calvary did have a list of general donors, which included entities that contributed money to Calvary in conjunction with the broadcast of that entity's program on KOKS. According to Nina Stewart, she did not answer Ramage's question correctly or show Ramage the station's list of donors because she was "flustered." MMB Ex. 1, p. 8; KOKS Ex. 3, pp. 30-31; KOKS Ex. 12; Tr. 799, 803, 1088-89.

62. Finally, Ramage asked Nina Stewart for the station's file which contained requests for time from political candidates. Calvary had no such file. Nina Stewart acknowledged that the station had received a few requests for time from state or local office candidates but none from candidates for national office. It was her understanding that the station only had to retain requests for time from national office seekers. MMB Ex. 1, pp. 7-8; KOKS Ex. 3, p. 31; Tr. 805-07.

Conclusions of Law

Blanketing and Misrepresentation Issues

63. Section 73.318 of the Commission's Rules, which deals with FM blanketing interference, states, in pertinent part:

Areas adjacent to the transmitting antenna that receive a signal with a strength of 115 dBu (562 mV/m) or greater will be assumed to be blanketed.

* * * *

(a) * * * *

(b) After January 1, 1985, permittees or licensees who either (1) commence program tests, or (2) replace their antennas, or (3) request facilities modifications and are issued a new construction permit must satisfy all complaints of blanketing interference which are received by the station during a one year period. The period begins with the commencement of program tests, or commencement of programming utilizing the new antenna. Resolution of complaints shall be at no cost to the complainant. These requirements specifically do not include interference complaints resulting from malfunctioning or mistuned receivers, improperly installed antenna systems, or the use of high gain antennas or antenna booster amplifiers. Mobile receivers and non-RF devices such as tape recorders or hi-fi amplifiers (phonographs) are also excluded.

(c) * * * *

(d) Following the one year period of full financial obligation to satisfy blanketing complaints, licensees shall provide technical information or assistance to complainants on remedies for blanketing interference.

64. As is apparent from the rule and as explained by the Commission in its October 30, 1990, Order (see para. 43, supra), an FM broadcaster has certain obligations with respect to complainants of blanketing interference. These obligations vary according to the location of the complainant, the equipment affected, and the timing of the complaint. Thus, for persons who reside within the blanketing contour and who first complain during the initial year of an FM station's operations, the broadcaster owes a duty to restore service to protected equipment, namely, televisions, radios and satellite dish antennae. For persons whose initial complaint occurs after the station's first year of operation or who reside outside the blanketing contour, the broadcaster must provide information or assistance to complainants on remedies for blanketing interference. To do this properly, the broadcaster must determine the cause of the interference problems to such complainants and provide advice on corrective measures.

65. Plainly, the rule seeks to protect those living near an FM radio tower from the adverse effects that a new or more powerful FM radio station can cause to television and radio receivers. These effects can vary from complete blockage of desired signals to a reduction in receiver sensitivity. Notice

of Proposed Rulemaking in BC Docket No. 82-186, 47 Fed. Reg.

18936, published May 3, 1982. As a practical matter, the rule admonishes present and future broadcasters to consider carefully where they locate their towers in order to minimize disruption to existing television and radio consumers. In addition, the rule requires broadcasters to be good neighbors and correct problems caused to nearby residents who possess television and radio receivers.

66. Thus, from October 4, 1988, when KOKS commenced broadcasting, Calvary had an obligation to resolve all timely-filed complaints to protected equipment at no cost to complainants residing within the blanketing contour. Further, with respect to complainants who resided outside the blanketing contour or who filed after the station's first year of operations, Calvary had an obligation to provide meaningful technical assistance to those adversely affected by blanketing. The record evidence establishes that, by any reasonable standard, Calvary repeatedly failed to meet its obligations under the blanketing interference rule.

67. At the outset, Calvary chose to locate the KOKS tower in a populated area. Thus, Calvary should have recognized that serious disruption might occur to those residing within the blanketing contour. However, Calvary failed to do so. Indeed, Calvary's answer to the blanketing question in the construction permit application form indicated that no one would be affected by the operation of its station. Since it appears that at least

220 residences were located within the KOKS blanketing contour, Calvary's answer was wholly unreasonable and had no basis in fact.

68. When KOKS began broadcasting and complaints immediately followed, Calvary never made meaningful attempts to ascertain complainants' problems. This is so despite the fact that during part of this time period, KOKS ceased broadcasting at 6 p.m. Calvary never went to a complainant's house to observe and listen to reception with KOKS on and off the air. Likewise, Calvary never asked a complainant whether the reception observed following Calvary's installation of a filter equalled what the complainant enjoyed prior to KOKS's advent.

69. Even when Calvary knew of specific problems, Calvary continually sought to avoid resolving them. If a complainant owned a booster, Calvary's practice was to act as if all interference to the complainant's equipment resulted from the booster without ascertaining whether this was the case. Thus, Calvary seldom ascertained whether complainants with boosters had affected equipment that was not connected to the booster or whether the booster had been installed after KOKS began causing interference to the complainant's equipment. Only in 1991, when it attempted restoration of service to complainants residing within the blanketing contour pursuant to a direct order from the Mass Media Bureau, did Calvary attempt to restore service by installing a filter regardless of the presence of a booster.

70. Similarly, if a complainant's principal problem was

KOKS interference to reception of Channel 6, Calvary initially took the position that it had no obligation to the complainant. Subsequently, Calvary recommended filters to complainants of KOKS interference to Channel 6. However, in giving short shrift to those complainants whose principal concern was Channel 6, Calvary often ignored the fact that the complainant might also have had problems with KOKS interference to other channels. Finally, although Calvary made some attempts in 1991 to resolve complaints based on KOKS interference to Channel 6 reception by installing the Microwave Filter Company filter, its efforts were not designed to satisfy complainants. Rather, Calvary sought to silence demands to restore Channel 6 by telling complainants that it had no obligation to restore service for Channel 6. Incredibly, Calvary has never informed complainants otherwise.

71. Calvary also never explained the glaring discrepancy between its conclusion, in its September 22, 1989, letter to the Commission, that only 89 complainants resided within the blanketing contour and the Commission's subsequent determination that 220 complainants so resided. Further, Calvary failed to explain why it almost never sought to resolve subsequent complaints from individuals whose problems had supposedly been resolved. The Bureau submits that the only reasonable inference that can be drawn is that Calvary intentionally ignored legitimate complaints. In short, Calvary always placed its interests over those of the complainants even though it had a duty to address and resolve the complainants' blanketing

interference problems.

72. Even when Calvary attempted to resolve complaints, its efforts were patently inadequate. Initially, Calvary installed only one inexpensive filter to one television set and then declared the problem solved. In so doing, Calvary ignored whether the complainant was satisfied, whether the complainant had more than one television set, and whether the complainant had also complained about interference to radios. Further, even when ordered by the Commission to restore service to all complainants living within the blanketing contour, Calvary did not attempt to deal with all television sets owned by a complainant. Rather, Calvary continued to limit its response by usually installing only one filter on only one television set per residence visited.

73. Finally, with respect to those complainants who did not want a home visit in 1991, Calvary did not make filters available free of charge. Rather, Calvary told complainants that they could buy filters from a Radio Shack or Charlie's TV Repair, which was owned and operated by Calvary's engineer. In so doing, Calvary directly contravened the Commission's October 30, 1990, Order, that restoration of service be at no cost to complainants. Similarly, Calvary contravened that Order in that it never offered to reimburse complainants who attempted on their own to restore television reception even when complainants paid Calvary's own engineer to do the repairs.

74. The Commission specified Issue 1 to determine whether Calvary violated the FM blanketing interference rule and, if so,

the nature and extent of the violation. The record evidence establishes that Calvary willfully and repeatedly violated the rule and that there is no assurance that Calvary will comply with the rule in the future. Accordingly, the Bureau submits that Issue 1 should be resolved adversely to Calvary.

75. In addition to willfully and repeatedly violating the blanketing interference rule, Calvary misrepresented facts to the Commission regarding efforts to resolve blanketing interference complaints. Also, Calvary lacked candor by failing to advise the Commission that particular complaints reported as having been resolved were later found to be unresolved.

76. Misrepresentation involves false statements of fact made with an intent to deceive. Lack of candor involves concealment, evasion and other failures to be fully forthcoming. Both represent deceit, differing only in form. Fox River Broadcasting, Inc., 93 FCC 2d 127, 129 (1983).

77. Absolute candor is perhaps the foremost prerequisite for Commission licenseeship. Catoctin Broadcasting Corp. of New York, 2 FCC Rcd 2126 (Rev. Bd. 1987), aff'd in pertinent part, 4 FCC Rcd 2553 (1989), recon. denied, 4 FCC Rcd 6312 (1989); Mid Ohio Communications, 104 FCC 2d 572 (Rev. Bd. 1986), rev. denied, 5 FCC Rcd 940 (1990), recon dismissed in part, denied in part, 5 FCC Rcd 4596 (1990). Indeed, "the trait of 'truthfulness' is one of the two key elements of character necessary to operate a broadcast station in the public interest." Character Policy Statement, 102 FCC 2d 1179, 1210 (1986). In order for the

Commission to maintain the integrity of its processes, it must routinely rely upon the representations of its licensees. Given the Commission's limited resources, its system of regulatory control must, of necessity, presuppose the honor of its regulatees. Tri-State Broadcasting Co., Inc., 5 FCC Rcd 1156, 1173 (1990), recon. denied, 5 FCC Rcd 3727 (Rev. Bd. 1990), rev. denied, 6 FCC Rcd 2604 (1991).

78. Calvary repeatedly told the Commission that blanketing interference complaints were resolved or that problems were cured. However, reports from Kansas City FOB inspectors of visits to complainants' homes as well as the testimony of complainants Smith, Jean Hillis, Denton, Durbin, Freeman, Gray, Beckham and Wynn demonstrate otherwise. Considering that Calvary never bothered to turn the KOKS transmitter off while at the complainants' homes and never checked its complaint files before going to a complainant's home to learn what the problems were, the Bureau submits that the complainants are more believable than is Calvary.

79. In its September 22, 1989, letter to the Commission, Calvary lied when it claimed to have resolved the complaints of Durbin, Gray and Wynn. In this regard, each had complained that Calvary's visits had not solved their problems, and Calvary had received and read each of their complaints before its September 22, 1989, letter.

80. In its letters of December 6, 1988, and January 24, 1989, Calvary lacked candor when it suggested to the Commission

that Doris Smith's problems had not been solved because she would not cooperate with Calvary. The truth was that Calvary's only attempt between October, 1988, and February, 1991, to improve Smith's television reception had failed and that it never attempted to restore Smith's service between January, 1989, and February, 1991.

81. With respect to Jean Hillis (and her husband, Bill), Calvary misrepresented facts or lacked candor by claiming: that Calvary was awaiting the arrival of a necessary filter; that KOKS was not interfering with either of the Hillis' televisions; and that it had not received a specific listing of the Hillises' complaints. The truth was that despite receipt of oral and written complaints from both Jean Hillis and her husband between October, 1988, and December, 1989, Calvary never tried to resolve any of their complaints until February, 1991.

82. In its February 10, 1989, letter to Kansas City FOB, Calvary lied when it stated that Edward Hodgins' complaints were unresolved because a convenient time could not be arranged for an appointment. Hodgins testified that Calvary failed to keep three appointments with him.

83. While it is conceivable that Calvary may have overlooked complaints or mistakenly reported some of its efforts in preparing its reports to the Commission, the Bureau submits that Calvary's routine failure to review its files thoroughly before submitting responses to the Commission is unwarranted and inexcusable. Thus, at the very least, Calvary's conduct

evidences a carelessness "so wanton, gross, and callous, and in total disregard of [its] obligations to the Commission, as to be equivalent to an affirmative and deliberate intent." Golden Broadcasting Systems, Inc., 68 FCC 2d 1099, 1106 (1978), quoting Tipton County Broadcasters, 37 FCC 197, 219 (1963), aff'd, 37 FCC 191 (1964).

84. In its written submissions to the Commission, Calvary, at best, provided incomplete and misleading information in response to Commission inquiries. In this regard, Calvary had a duty to correct apparently erroneous claims that complaints had been resolved when subsequently filed complaints indicated otherwise. Likewise, Calvary had a duty to explain that the complaints it addressed did not include radios or additional television sets. Moreover, Calvary's disingenuous wording created the impression that it had expended its best efforts to satisfy all blanketing complaints. The Commission's staff had no way of knowing what Calvary really meant; namely, that Calvary had satisfied all those complaints which it chose to resolve instead of what Section 73.318 of the Commission's Rules required it to resolve. The Commission has a right to expect more from its licensees.

85. Finally, Calvary demonstrated at the hearing that it cannot be trusted. Specifically, Don Stewart lied about his running the transmitter over the authorized power when Craig Meador was at the Stewart home to repair their satellite dish.

86. In sum, the record establishes that Calvary is not

trustworthy. Calvary's submissions repeatedly reflect an inability to be completely forthcoming and a willingness to shade the truth. Accordingly, the Bureau submits that Issue 2 should be resolved adversely to Calvary.

Ineptness Issue

87. It is well settled that ineptness by an applicant will not be deemed disqualifying unless the conduct in question concerns relevant matters of major significance, and where the conduct has disclosed a pattern of carelessness and inadvertence. Edward G. Atsinger III, 29 FCC 2d 443, 447 (Rev. Bd. 1971); Folkways Broadcasting Company, Inc., 6 FCC 2d 175, 179 (Rev. Bd. 1970). Whatever derelictions were noted during the Commission's inspections of KOKS, they were neither major nor part of a pattern. Accordingly, Calvary will not be disqualified on this basis.

Ultimate Conclusion

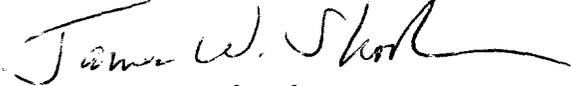
88. Because of Calvary's willful and repeated failures to comply with Section 73.318 of the Commission's Rules (FM blanketing interference) and its misrepresentations and lack of candor to the Commission, Calvary's application for renewal of license for Station KOKS(FM) should be denied. In addition, because Calvary's license renewal application should be denied,

no forfeiture should be imposed even though Calvary willfully or repeatedly violated Sections 73.318, 73.1015, and 73.1560 of the Commission's Rules.

Respectfully submitted,
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February 5, 1993

CERTIFICATE OF SERVICE

Michelle C. Mebane, secretary of the Hearing Branch, Mass Media Bureau, certifies that she has on this 5th day of February, 1993, sent by regular United States mail, U.S. Government frank, copies of the foregoing "**Mass Media Bureau's Proposed Findings of Fact and Conclusions of Law**" to:

Joseph E. Dunne, III, Esq.
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